Michael K. Jeanes, Clerk of Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2011-000750-001 DT 06/01/2012

COMMISSIONER MYRA HARRIS

CLERK OF THE COURT
K. Waldner
Deputy

JROD INVESTMENTS

v.

LONNY VANATTA (001)
LISA VANATTA (001)

ANDREW M HULL

LONNY VANATTA
18984 N 90TH PL
SCOTTSDALE AZ 85255
LISA VANATTA
18984 N 90TH PL
SCOTTSDALE AZ 85255

MCDOWELL MOUNTAIN JUSTICE COURT
REMAND DESK-LCA-CCC

RECORD APPEAL RULING / REMAND

Lower Court Case No. 2011151009.

Defendants Appellants Lonny and Lisa Vanatta (Defendants) filed a Motion for Rehearing[1] of this Court's opinion affirming the action of the McDowell Mountain Justice Court's determination that they were guilty of a forcible detainer. Defendants contend this Court erred. For the reasons stated below, this Court denies the requested reconsideration.

I. FACTUAL BACKGROUND.

On March 15, 2012, this Court—by Minute Entry—denied Defendants' requested relief from the McDowell Mountain Justice Court's determination that they were guilty of a forcible detainer. The Minute Entry was filed on March 16, 2012. On April 16, 2012, Defendants filed a Notice of Appeal with the Court of Appeals. On April 30, 3012, Defendants filed a "Motion: To Vacate Judgment and Decision To Return All Monies To Defendant's [sic]." This document essentially raised the same issues Defendants raised on appeal to this Court and referred to a lower court of appeals decision—402 Now LLC v. Mitchell, LC2009–000691–001 DT—

[1] Defendants referred to their motion as Motion: To Vacate Judgment and Decision To Return All Monies To Defendant's [sic].

involving another party. The "Motion to Vacate Judge and Decision To Return All Monies to Defendant's [sic]" also alleged the McDowell Mountain Justice Court (1) lacked subject matter jurisdiction and (2) relied on the lower court decision—LC2009–000691–001 DT—as support for their conclusion. On May 22, 2012, Defendants filed a document entitled "Appellant Memorandum Motion for more time and included six exhibits with this document. Lonny and Lisa Vanatta each included an affidavit with their May 22, 2012, Appellant Memorandum stating (1) Mr. Vanatta ordered and paid for the CD for the McDowell Mountain Justice Court held on August 4, 2011, on April 19, 2012; (2) Mrs. Vanatta listened to the CD and could not find their case; and (3) the quality of the CD was poor. Mr. Vanatta asserted he reordered the CD on May 21, 2012.

On April 25, 2012, Plaintiff JROD Investment filed a motion to Strike Defendants' Notice of Appeal.

This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12–124(A).

II. ISSUES:

A. *Did Defendants Comply With The Mandates Of Rule 14 SCRAP—Civ.*

Rule 14 (a), Superior Court Rules of Appellate Procedure—Civil (SCRAP—Civ.) provides:

> Any party desiring a rehearing of a decision or order of the superior court which finally disposes of the case, except for an order denying rehearing, may file a motion for rehearing within 14 calendar days after service of the decision or order. Accompanying the motion shall be a memorandum of law or fact which the movant contends the court has decided wrongly.

This Court issued its opinion on March 15, 2012. The Minute Entry was filed on March 16, 2012. Defendants did not file their "Motion: To Vacate Judgment and Decision To Return All Monies To Defendant's [sic]" until April 30, 2012. Their motion is time barred.

Defendants also filed a Notice of Appeal with the Court of Appeals. Rule 14 (b) SCRAP—Civ. States:

> No further appeal may be taken from a final decision or order of the superior court under these rules, except where the action involves the validity of a tax, impost, assessment, toll, statute or municipal ordinance.

The Court of Appeals is the appropriate body to determine if Defendants qualify for an appeal.

B. Did The Lower Court Appeal Decision LC2009–000691–001 DT Support Defendants' Post-Appeal Claim That The McDowell Mountain Justice Court Lacked Subject Matter Jurisdiction

Defendants belatedly challenge the subject matter jurisdiction of the McDowell Mountain Justice Court. Although subject matter jurisdiction can be raised at any time during the pendency of the action—including for the first time on appeal, *Health For Life Brands, Inc. v. Powley*, 203 Ariz. 536, 57 P.3d 726 ¶ 12 (Ct. App. 2002)—this action had ended and the judgment was final before Defendants made their allegation. Additionally, Defendants failed to support their allegation with the facts they presented in their case.

The McDowell Mountain Justice Court ruled on a forcible detainer case. Justice courts have jurisdiction over forcible detainers. A.R.S. § 22–201(E)(4). Plaintiffs originally filed a forcible detainer action. Defendants responded to that action and requested various types of relief including an injunction to give his family time to relocate and a request for damages for an unlawful entry. In the Answer,[2] Defendants referred to themselves as tenants. Defendants made additional allegations about the Plaintiff failing to show them requested proof of ownership or agency but Defendants did not allege they were the owners of the property. In their Counterclaim, defendants repeated the assertion about a landlord tenant relationship. Defendants specifically alleged: "Landlord made an unlawful, forcible entry in an unreasonable manner with repeated demands for entry, with unreasonable harassment."[3]

Defendants attempted to amend their Answer on the day set for the forcible detainer hearing but the trial court denied their request. The trial court also denied their counterclaim. In so ruling, the trial court determined Defendants' request exceeded the scope of a detainer action and said Defendants' remedy was to seek a civil lawsuit. Defendants did not then allege they were the rightful owners of the property and did not allege the sale was invalid. Instead, they maintained the recording of the deed was improper. This is not the same as alleging ownership of the property. Defendants several times referred to "landlord" and "tenants" in their pleadings. They also provided the trial court with proof of Plaintiff's purchase of the home as part of their Motion To Amend. Because the McDowell Mountain Justice Court had proof the home had been sold, it did not err in proceeding with the forcible detainer action since Defendants retained possession of the home after the sale.

The trial court determined Defendants were guilty of a forcible detainer and Defendants appealed to this Court following trial. They did not allege they were the owners of the home in their appeal. Instead they ignored the fact that they provided the trial court with the proof the home had been sold. Defendants raised the issue about a lack of subject matter jurisdiction for the first time when they filed their April 30, 2012, Motion: To Vacate Judgment and Decision to Return All Monies To Defendant's [sic]." This is long after their (1) case and (2) appeal ended.

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[2] Defendants filed a document entitled "Request Trial By Jury, Answer (Eviction Action) (injunction 90 Day Temporary Counter Claim [sic]." This Court will refer to this document as Answer. In the Answer, Defendants allege "ARS 33–1376(B) [sic] states tenant may obtain injunctive relief when Landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably harassing the tenant."

[3] Counterclaim (Eviction Action) filed with the McDowell Mountain Justice Court on August 4, 2011.

Defendants also relied on a lower court of appeals decision as support for their claim. This is inappropriate and misstates the effect of Superior Court appellate decisions. Maricopa County Lower Court Appeals decisions are governed by the Superior Court Local Rules—Maricopa County, Rule 9. Rule 9.1(b) states the following—in relevant part—about the scope of these rules:

> The Appeals Department shall exercise the appellate and special action jurisdiction of the Superior Court over all criminal, civil (including Orders of Protection and Injunctions Against Harassment), and civil traffic cases from the limited jurisdiction courts within Maricopa County.

Rule 9.11 allows the Appeals Department, on its own motion or the motion of any party, to designate its decisions for publication in the manner prescribed by Rule 111, Rules of the Supreme Court. Rule 111 defines memorandum decisions as separate from those intended for publication. According to Rule 111, a memorandum decision is a "written disposition of a matter not intended for publication." Rule 111(c) provides that memorandum decisions shall not be regarded as precedent and shall not be cited except for two limited purposes: (1) establishing the defense of res judicata, collateral estoppel, or the law of the case or (2) informing the appellate court of other memorandum decisions so the court can decide whether to issue a published opinion, grant a motion for reconsideration, or grant a petition for review.

In *Kriz v. Buckeye Petroleum Co., Inc.,* 145 Ariz. 374, 701 P.2d 1182, n. 3 (1985) the Arizona Supreme Court chastised one of the litigants—Black Corporation—for its use of a memorandum decision as authority and said: "We will give no consideration to the memorandum decision Black Corporation has cited." The Arizona Court of Appeals expanded on this holding and ruled out-of-state memorandum decisions are no more citable than in-state memorandum decisions and refused to grant these decisions any credence. *Walden Books Co. v. Dept. of Revenue,* 198 Ariz. 584, 12 P.3d 809 ¶ ¶ 21–23 (Ct. App. 2000). The prohibition was extended to federal district court memorandum decisions in *Hourani v. Benson Hosp*., 211 Ariz. 427, 122 P.3d 6 ¶ 27 (Ct. App. 2005). Persuasively, Ariz. R. Civ. App. P., Rule 28(c) states memorandum decisions shall not be regarded as precedent or cited in any court except for the two limited purposes described above. Although other jurisdictions[4] do allow the use of memorandum decisions, our Courts and our procedural rules do not allow for the use of memorandum

[4]For example, Texas, Utah, and West Virginia allow unpublished decisions to be used as authority. TX R APP Rule 47.7. Citation of memorandum decisions**.** All opinions and memorandum opinions in civil cases issued after the 2003 amendment have precedential value. W. Va. R. App. P. 21. Memorandum decisions may be cited in any court or administrative tribunal in this State; provided, however, that the citation must clearly denote that a memorandum decision is being cited, *e.g. Smith v. Jones*, No. 11-098 (W.Va. Supreme Court, January 15, 2011) (memorandum decision). Memorandum decisions are not published in the West Virginia Reports, but will be posted to the Court's website. UT R RCRP Rule 37. Published decisions of the Supreme Court and the Court of Appeals may be cited as precedent in all criminal proceedings. Unpublished decisions may also be cited as precedent, so long as all parties and the court are supplied with accurate copies at the time the decision is first cited.

decisions except for the limited purposes cited in Rule 111 and Ariz. R. Civ. App. P., Rule 28(c). Because this appellate decision has not been designated for publication, it forms no precedent for this or any trial court.

While this Court recognizes Defendants can submit the opinion as support for their requested reconsideration motion, this Court finds the decision in LC2009–000691–001 DT to be inapposite as Defendants did not challenge Plaintiff's ownership of the property during the pendency of the action. Defendants cannot raise new issues on a motion for reconsideration. *Ramsey v. Yavapai Family Advocacy Center*, 225 Ariz. 132, 235 P.3d 285 ¶ 18 (Ct. App. 2010).

III. CONCLUSION.

Because the time to file a motion for reconsideration lapsed and because this Court finds Defendants' argument about subject matter jurisdiction to lack merit, this Court denies Defendants' untimely (1) Motion for More Time and (2) Motion: To Vacate Judgment and Decision To Return All Monies To Defendant's [sic]." Based on the foregoing, this Court denies Defendants' motions.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Myra Harris
THE HON. MYRA HARRIS
Judicial Officer of the Superior Court

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